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## **Section 664.6 Judgment Must Track Agreement**

Code of Civil Procedure section 664.6 allows the court, upon motion, to enter judgment pursuant to the terms of the parties' settlement. But may prejudgment interest be awarded as an element of damages if it is not stated in the settlement agreement? The answer is no, according to *BTHHM Berkeley, LLC v. Johnston* (2024) 100 Cal.App.5th 1220.

BTHHM sought to operate a cannabis dispensary and signed a letter of intent with Johnston to lease a location to operate his business once the city granted the permit. The city approved the permit, but Johnston refused to deliver possession of the property to BTHHM. After suing each other, the parties settled the case in mediation with a two-page term sheet signed by all parties. The terms included scheduled settlement payments from Johnston to BTHHM, a stipulated judgment for any unpaid balance due, \$250,000 as liquidated damages for a breach, and that the agreement was "admissible and enforceable in court pursuant to Code of Civil Procedure § 664.6."

Johnston later attempted to withdraw from the settlement, claiming that he signed the agreement without understanding it was to be a final settlement. The court granted BTHHM's motion to enforce the term sheet pursuant to section 664.6, finding that it was an enforceable agreement with clear and definite terms and that Johnston's "self-serving" statements that he did not intend to be bound by the term sheet were not credible. The trial court entered judgment for BTHHM for the remaining settlement amounts due under the term sheet, and awarded prejudgment interest on the unpaid settlement amounts. Johnston argued on appeal that the trial court lacked authority to award prejudgment interest because the parties never so agreed.

The Court of Appeal agreed with Johnston, stating "[s]ection 664.6 authorizes the trial court to enter a judgment reflecting the terms of the parties' settlement agreement—nothing more, and nothing less." The court noted that although a judge hearing a section 664.6 motion may receive evidence, determine disputed facts and enter the terms of a settlement agreement as a judgment, nothing in section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon.

The court noted that prejudgment interest is an element of damages, not a cost of litigation, and found that the parties reached an agreement about what amount of money would adequately compensate BTHHM for the harm it suffered to warrant BTHHM's release of claims. That agreement included a liquidated damages provision that would become operative if Johnston failed to make timely payment. By awarding prejudgment interest to compensate BTHHM for damages it suffered by virtue of Johnston's failure to pay, the trial court entered a judgment that

differed materially from the terms of the parties' agreement, and to that extent it was unauthorized.

Civil Code section 3287 (interest on damages) does not authorize an award of prejudgment interest on a judgment entered pursuant to section 664.6 "where, as here, the parties have reached their own agreement about what compensation is owed for damages that would otherwise be addressed by an award of prejudgment interest." The court concluded that the portion of the judgment providing for prejudgment interest should be stricken without invalidating the judgment.

**The Takeaway:** A judgment entered pursuant to section 664.6 must reflect the terms of the parties' settlement agreement. Don't overreach by adding material terms not agreed upon in the settlement.